IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 16 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

JAGDISH PROCESSORS PVT.LTD

Appearance:

MR AKIL KURESHI FOR MR MANISH R BHATT for Petitioner

MR MANISH SHAH FOR JP SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 29/08/2000

ORAL JUDGEMENT (Per A.R.Dave, J)

#. At the instance of the Revenue, the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income-Tax Act, 1961 (hereinafter referred to as `the Act'):

"Whether on the facts and in the circumstance of the case the claim of the assessee was governed by explanation (b) (vii) of Section 40A(8) of the Income-Tax Act, 1961 and hence the disallowance of interest of Rs.49,984/- was not justified?"

#. The facts leading to the reference are as under:-

The assessee company had paid a sum of Rs.8,41,608/- by way of interest during Assessment Year 1980-81. Out of the said amount, a sum of Rs.5,06,373/was paid to banks and so far as remaining amount of Rs.3,33,235/- was concerned, as it was covered by the provisions of Section 40A(8) of the Act, 15% of the said amount, being Rs.49,984/- was disallowed and added in the income of the assessee. The assessee had submitted that out of Rs.3,33,235/-, a sum of Rs.2,00,258/- was paid to the agents of the assessee and therefore the assessee had claimed benefit under the provisions of Section 40A(8)(b)(vii) but the said benefit was not given by the Assessing Officer as the said interest was given on the `sharafi' accounts maintained by the agents.

#. Being aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income-Tax (Appeals). The said Appeal came to be dismissed and therefore, the assessee approached the Income-Tax Appellate Tribunal, Ahmedabad Bench `A' by way of an Appeal.

#. After hearing the assessee and a representative of the Revenue, the Appellate Tribunal allowed the Appeal on the ground that the case was covered by M.E. vs. ITD II TTJ 299.

#. It has been submitted by Mr. Akil Kureshi, learned counsel for the Revenue that in the instant case, the amount of interest was not covered under the Explanation (b)(vii) to Section 40A(8) of the Act and therefore the Assessing Officer had rightly disallowed 15% of the amount of interest paid by the assessee to the agents and the Commissioner of Income-Tax (Appeals) had rightly dismissed the appeal. It has been submitted by Shri Kureshi that so as to have an advantage of the said Explanation, the assessee ought to have satisfied the

Authority that the amount of interest paid was covered by the said explanation. As a matter of fact, the Assessing Officer had found that the agents to whom interest was given had maintained their Sharafi accounts with the assessee and the said interest was given on the amount deposited with the assessee on the sharafi accounts. He has relied upon the judgement delivered in the case of Agew Steel Manufacturers Private Limited v. C.I.T. 209 ITR 77 to substantiate his argument that when interest is paid on deposits by the assessee company, the interest paid is subject to disallowance of 15% as provided under Section 40A(8) of the Act.

#. On the other hand, learned counsel Shri Manish Shah appearing for the assessee has submitted that the Tribunal did not consider certain arguments which were advanced by the assessee and the evidence which the assessee wanted to adduce before the Tribunal to show that the assessee company was entitled to the benefit under the Explanation (b)(vii) to Section 40A(8) of the Act. It has been submitted by Shri Shah that in view of the order passed in M.E. Vs. ITD (supra), the Tribunal had decided the Appeal in favour of the assessee, and, therefore, other arguments made on behalf of the assessee were not referred to and dealt with in the order of the Tribunal. In the circumstances, he has prayed for remand in view of law laid down in the case of C.I.T. West Bengal I vs. Indian Molasses Co. P. Ltd. 78 ITR 474 so that further evidence can be adduced before the Tribunal by the assessee.

#. We have heard the learned counsel and perused the provisions of Section 40A(8) and Explanation (b)(vii) thereto. It is crystal clear that so as to have an advantage of Explanation (b)(vii) to Section 40A(8) of the Act, the assessee has to show that the amount of interest was paid on amount received by it -

- by way of security or as an advance from any purchasing agent, selling agent or other agent in the course of, or for the purpose of the business of the assessee company, or

- as advance against orders for the supply of goods or for rendering of any service.

#. As no evidence to the above effect was adduced before the Authorities below, the Assessing Officer and the Commissioner of Income-Tax (Appeals) had rightly decided that 15% of the amount of interest ought to have been disallowed. The Tribunal has, therefore, committed an

error in ignoring the fact that there was no evidence to show that the amount of interest was paid for the purpose covered under the Explanation (b)(vii) to Section 40A(8) of the Act.

#. So far as the submission made by Mr. Shah with regard to non-consideration of the evidence is concerned, , we do not agree with the said submission for the reason that no evidence was adduced by the assessee either before the Assessing Officer or before the Commissioner of Income-Tax (Appeals) to substantiate the case of the assessee company. Had the assessee been right in its submission, the assessee would have adduced evidence before the Assessing Officer or before the Commissioner of Income Tax (Appeals). The assessee did not lead any evidence and did not not place on record any material to show that the interest paid by the assessee to its agents was covered by the Explanation (b)(vii) to Section 40A(8) of the Act. In the circumstances, the assessee cannot claim any benefit under the abovestated explanation.

##. Learned counsel Mr. Shah has made a request that in view of the law laid down by the Supreme Court in the case of CIT, West Bengal I v. Indian Molasses Co. P. Ltd. 78 ITR 474, the case should be remanded to the Tribunal so that additional evidence can be adduced before the Tribunal. In our opinion, this is not a fit case to remand the matter to the Tribunal because neither evidence was ever adduced by the assessee before any of the authorities nor any averment was made to show that the case of the assessee was covered by the Explanation (b)(vii) to Section 40A(8) of the Act. On the contrary, there is a finding to the effect that interest was paid on sharafi accounts maintained by the agents with the assessee company.

##. For the reasons stated hereinabove, we answer the question referred to us in favour of the Revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

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